

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 886 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHENDRA CHHOTALAL SHAH

Versus

JAYANTILAL MANILAL SHAH

Appearance:

MR PRAFUL J BHATT for Petitioners
MR VIVEK BAROT for Respondent No. 1
MR SR DIVETIA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/06/98

ORAL JUDGEMENT

Heard learned advocates Mr. P.J.Bhatt for the petitioners, Mr. P.R.Abichandani for the respondent no.1 and Mr.S.R.Divetia, learned APP for respondent no.2.

This petition is preferred against the judgment and order passed by the learned Chief Judicial

Magistrate, Nadiad in Criminal Case No. 6654/86 on 26th October, 1988, in so far as the learned Magistrate has ordered to hand over the muddamal property to the complainant and the judgment and order dated 8th May, 1997, passed by the learned Additional Sessions Judge, Nadiad, in Criminal Appeal No. 53/98.

It appears that the complainant Jayantilal is engaged in the business of manufacturing stainless-steel utensils and the accused-petitioners are engaged in the business of polishing the stainless-steel utensils. It was the complaint of the complainant Jayantilal that the complainant had sent utensils worth Rs. 12,000/- to the accused for polishing and to facilitate the polishing of their utensils on priority, they also gave two electric motors to the accused. However, the accused retained the said electric motors and utensils and refused to give them back to the complainant. In course of investigation, the said electric motors and utensils were produced by the accused before the court and were placed in police custody. Upon trial, it was found that the amount being Rs. 54,000/- was outstanding; due and payable by the complainant to the accused. In course of trial, it was submitted that with a view to adjusting the said outstanding dues, the accused had retained the said electric motors and the utensils. It was established before the learned Magistrate that the utensils were sent by the complainant for polishing as alleged, and that the electric motors were also given as alleged. The learned Magistrate, however, held that the accused had no intention to cheat. It was also not established that the accused had abused or administered threats to the complainant. The accused were, therefore, under order dated 26th October, 1988, acquitted of the criminal charge. However, the muddamal was ordered to be handed over to the complainant. Feeling aggrieved, the accused had preferred Criminal Appeal No. 53/88 before the learned Additional Sessions Judge, Nadiad, which was dismissed under judgment and order dated 8th May, 1997. Feeling aggrieved, the accused have preferred the present petition under Article 227 of the Constitution of India.

Mr. Bhatt has submitted that the dispute involved was essentially of civil nature and the learned trial Judge could not have decided the civil dispute between the complainant and the accused. He has submitted that it is undisputed that the muddamal in question was produced by the accused from their possession and on their acquittal of the criminal charge, muddamal ought to have been handed over to the accused. He has relied upon the judgment of the Supreme Court in

the matter of PUSHKAR SINGH VS STATE OF MADHYA PRADESH & ORS (AIR 1953 SC 508). In the matter before the Supreme Court, the court came to the conclusion that the money alleged to have been stolen by the accused belonged to the accused. The court, therefore, ordered to hand over the said money to the accused on their acquittal. In the present case, the facts are entirely different. The learned Magistrate has come to the conclusion that the muddamal belong to the complainant. It is not even the case of the accused that the muddamal belonged to them. It is conceded that the muddamal were of the ownership of the customers of the accused. The learned Magistrate has recorded a finding that the complainant was the owner of the muddamal articles and had a right to possess the same. Section 452 of the Criminal Procedure Code does not enjoin the learned Magistrate to hand over muddamal articles to the person from whom it was recovered. The learned Magistrate is required to ascertain as to who has a right to possession of such articles. In the present case, the learned Magistrate has found the complainant to have a right to possession of the said articles. The finding of ownership of the said articles recorded by the learned Magistrate is not even challenged. The learned Magistrate was, therefore, right in ordering to hand over the possession of the muddamal to the complainant. It is undisputed that the muddamal was sent to the accused for polishing and in that view of the matter, it can not be said that the accused had right to retain the said muddamal with them. In view of the above facts, the order impugned herein does not call for any interference by this court.

Petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

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